84-1961

Office-Supreme Court, U.S.
FILED
MAY 30 1985
ALEXANDER L. STEVAS,
CLERK

NO._____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1985

ALAN W. WOLF AND GAIL S. WOLF,

Petitioners,

V.

RICHMOND COUNTY HOSPITAL AUTHORITY,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Counsel of Record

A. CAMDEN LEWIS
DARYL G. HAWKINS
Post Office Box 11208
Columbia, South Carolina
(803) 771-8000

QUESTION PRESENTED

Whether these contacts are sufficient to constitute "doing business" for the purpose of South Carolina obtaining in personam jurisdiction over a Georgia Hospital under South Carolina's Long-Arm Statute (South Carolina Code Section 36-2-802)?

1) Georgia Hospital in Augusta, Georgia derives one fifth (1/5) of its income from South Carolina residents and receives payments from South Carolina welfare agencies;

2) Georgia Hospital is listed in the yellow pages of the telephone directory for North Augusta, South Carolina, a City in Aiken County, South Carolina;

3) Georgia Hospital is under contract to provide laundry services to the Edgefield County Hospital in South Carolina;

4) Georgia Hospital as a member of

the East Central Georgia Health Services Agency, Inc., which district includes Aiken County, South Carolina, willingly receives special medical equipment to the exclusion of Aiken County Hospitals, which equipment is to be used for all citizens of the East Central Georgia Hospital Services Agency, Inc.

Title of this case in this Court is:

ALAN W. WOLF AND GAIL S. WOLF,

Petitioners,

versus

RICHMOND COUNTY HOSPITAL AUTHORITY,

Respondent.

TABLE OF CONTENTS

QUESTION PRESENTED..... i

TABLE OF AUTHORTIES..... iv

OPINION..... 1

JURISDICTION..... 1

STATUTES INVOLVED..... 2

STATEMENT OF THE CASE..... 2

ARGUMENT..... 4

CONCLUSION..... 15

APPENDIX..... 16

(a) OPINION OF THE FOURTH CIRCUIT COURT OF APPEALS..... 17

(b) ORDER OF THE DISTRICT COURT... 52

(c) PETITION FOR REHEARING..... 67

AFFIDAVIT OF SERVICE..... 69

TABLE OF AUTHORITIES

Cases:
August--v--Parkinson, 734 F.2d 168 (4th Cir. 1984)..... 9

Cubbage -v- Merchent, 732 F.2d 1476 (9th. Cir. 1984) Cert. denied, ___U.S. ___, 105 S.Ct. 1359 (1985)..... 12, 13

Gelineau -v- New York University Hospital, 375 F. Supp. 661 (D.N.J. 1974)..... 10

Helicopteros Nacionales de Columbia, S.A.-v- Hall, ___U.S.___ 104 S.Ct. 1868 (1984)..... 5

Hume -v- Durwood Medical Clinic, Inc., ___S.C.___, 318 S.E.2d 119 (S.C. App. 1984)..... 13

International Shoe Co. -v- Washington, 326 U.S. 310 (1945)..... 5, 13

Kathrein -v- Parkview Meadows, Inc., ___N.M.___, 691 P.2d 462 (N.M. 1984). 12, 13

Lee -v- Walworth Valve Company, 482 F.2d 297 (4th. Cir. 1973)..... 9, 10

Lemke -v- St. Margaret Hospital, 552 F. Supp. 833 (N.D. Ill. 1982)..... 11

Worldwide Volkswagen -v- Woodson, 444 U.S. 286 (1980)..... 15

Statutes:
S.C. Code Ann Section 36-2-802

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit entered in the above-styled case.

OPINIONS BELOW

The Opinion of the Fourth Circuit Court of Appeals from which this Petition for a Writ of Certiorari is derived is contained in the Appendix. The case is reported in 745 F.2d 904 (4th Cir. 1984).

JURISDICTION

The Judgment of the Court of Appeals for the Fourth Circuit was made and entered on October 4, 1984. The Appellee's Petition for rehearing was denied by a vote of seven

to four on March 6, 1985. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTES INVOLVED

S.C. Code §36-2-802 (1976):

A Court may exercise personal jurisdiction over a person domiciled in, organized under the law of, doing business, or maintaining his or its principal place of business in, this State as to any cause of action.

STATEMENT OF THE CASE

In this action, the Plaintiffs seek to recover damages for the severe injuries inflicted on their infant son by the grossly negligent actions of the agents of the University Hospital, a facility owned and operated by the Defendant. University Hospital is located in Augusta, Georgia and Plaintiffs were residents of Aiken, South

Carolina when this action was filed. Jurisdiction in the United States District Court for the District of South Carolina was based upon diversity of citizenship. 28 U.S.C. §1332.

The Respondent filed a Motion to Dismiss for lack of personal jurisdiction purusant to Fed. R. Civ. P. 12(b)2. This Motion was denied by the District Court. Jurisdiction was found to be properly before the Court pursuant to the South Carolina Long-Arm Statute, S.C. Code Ann. Section 36-2-802 (1976). On appeal, the United States Court of Appeals for the Fourth Circuit reversed the decision of the District Court and granted Defendant's Motion to Dismiss.

The request for a Writ of Certiorari rests upon the question of what is meant by "doing business" for purposes of obtaining in

personam jurisdiction under the South Carolina Long-Arm Statute.

ARGUMENT

At issue before the Court is whether a Georgia Hospital's contacts with the State of South Carolina are sufficient to constitute "doing business" for the purposes of obtaining in personam jurisdiction under the South Carolina Long-Arm Statute. The granting of certiorari by this Court will allow it to resolve the following issue which is necessarily
comprised therein:

> WHETHER A HOSPITAL AUTHORITY WHICH INCLUDES TERRITORY IN TWO STATES HAS SUFFICIENT CONTACTS TO BE SUED IN EITHER STATE?

S.C. Code Ann. Section 36-2-802 (1976) provides in relevant part "[A] court may exercise personal jurisdiction over a person...doing business...in this State as to

any cause of action." When exercising such jurisdiction due process requirements are satisfied when the person over whom jurisdiction is asserted has established certain minimum contacts with the forum such that requiring him to defend his interests in the forum State would not "offend traditional notions of fair play and substantial justice." International Shoe Co., -v- Washington, 326 U.S. 310, 316 (1945). The sufficiency of contacts threshold is elevated, however, when the cause does not arise in the forum state or derive from the foreign corporations transactions in the State. In Helicopteros Nacionales de Columbia, S.A. -v- Hall, ___U.S.___, 104 S.Ct. 1868 (1984), the Supreme Court characterized the test to be aplied in this situation to be whether the contacts are of a "continuous and systematic" nature.

The Fourth Circuit herein held that the hospital's contacts were not purposeful, systematic or continuous enough to warrant the exercise of jurisdiction in light of due process guarantees. The Fourth Circuit also applied its own standard and held that the contacts with the forum state were not "fairly extensive" to warrant jurisdiction since the cause of action arose outside of the state. (Appendix 12). An analysis of the differing decisions of the Circuits and the State Courts of last resort, provides ample reason why the Court should exercise its discretion and establish a standard test in order that uniform decisions may be rendered in this much litigated area.

Before looking at the varying views of the Courts, the "contacts" which were found by the District Court must be considered.

1. The South Carolina Department of Health and Environmental Control (DHEC) has authorized Augusta Hospital to receive payments from the State of South Carolina for residents of Aiken County, South Carolina, seeking certain maternity and neonatal services at University Hospital.

2. University Hospital received payments from Aiken County Council as reimbursement for treatment of residents of Aiken County who are indigent.

3. Although Richmond County Hospital Authority has no hospital or medical facility located in South Carolina, the University Hospital does receive medicaid/medicare reimbursements for qualified South Carolina residents treated at University Hospital.

4. University Hospital is listed in the yellow pages of the telephone directory for North Augusta, South Carolina, a city located in Aiken County, South Carolina.

5. University Hospital is under contract to provide laundry services to the Edgefield County Hospital in South Carolina.

6. University Hospital derives a substantial amount of revenue from treatment of South Carolina residents; defendant admitted in oral argument that approximately one-fifth (1/5) of University Hospital's income is obtained from South Carolina residents.

7. University Hospital is a

member of the East Central Georgia Health Services Agency, Inc. This agency was created to coordinate health care needs in its district, which district includes Aiken County, South Carolina. This is the only such district in South Carolina that crosses state lines. While this agency does not directly have jurisdiction over patient admission, the effect of University Hospital's membership in the agency is to require South Carolina residents in Aiken County as a practical matter to receive secondary and tertiary level care from University Hospital. This is because the agency has jurisdiction over capital expenditures and construction, as well as issuing certificates of need. The purpose of the agency is to avoid duplication of expensive facilities. Since University Hospital is well equipped with such advanced medical facilities and Aiken County Hospital is also within the Agency's district, Aiken Community Hospital does not receive the advanced equipment. The Agency's efforts to avoid duplication therefore require Aiken County residents to seek secondary and tertiary level care from the University Hospital in Augusta, Georgia, since it is the closest and most convenient facility of its kind.

The Fourth Circuit seems to have

difficulty in applying a uniform test in its own cases. In August -v- Parkinson, 734 F.2d 168 (4th Cir. 1984), the Court held that the Virginia Courts may constitutionally exercise in personam jurisdiction over an Arizona insurance company that, by mail, solicited change in policy coverage from a former Arizona resident, now residing in Virginia, who purchased the policy in Arizona. But looking to the case at bar, the Court held that the University Hospital's contacts were not "fairly extensive" even though the seven enumerated contacts clearly are more extensive than the solicitation in the August case. In Lee -v- Walworth Value Company, 482 F.2d 297 (4th Cir. 1973), the Court held that South Carolina has a legitimate interest in affording its citizens redress for tortious injury, even though the act occurred outside of the state. The Court stated"...the fre-

quency and regularity of (the Defendant's) activity in South Carolina make it fair to hold it answerable in that state to Mrs. Lee." Lee at 300. But in the case at bar, the Court made a complete turn-around and held that even though approximately one-fifth (1/5) of the Hospital's income is obtained from South Carolina residents, the Hospital has a contract to provide laundry services to the Edgefield County Hospital in South Carolina, and it advertised in the yellow pages of the telephone directory for North Augusta, South Carolina the contacts were de minimus and personal jurisdiction should be denied.

The meaning of the word "solicit" seems to give the Courts the greatest problem when trying to decide whether contacts are continious and systematic. In Gelineau -v- New York University Hospital, 375 F. Supp.

661, 667 (D.N.J. 1974), the Court stated:

> Unlike a case involving involuntary interstate or international economic activity. . . the residence of a recipient of personal services rendered elsewhere is irrelevant and totally incidental to the benefits provided by the defendant at his own location. It is clear that when a patient travels to receive professional services without having been solicited. . . then the client, who originally traveled to seek services apparently not available at home, ought to expect that he will have to travel again if he thereafter complains that the services sought by him in the foreign jurisdiction were there rendered improperly.

Solicitation, however, was found in Lemke -v- St. Margaret Hospital, 552 F. Supp. 833 (N.D. Ill. 1982). In this case plaintiff brought a wrongful death action in Illinois against the defendant hospital which was located in Indiana. The Court held that the defendant was "doing business" in Illinois because defendant regularly soli-

cited Illinois residents. The solicitation determination was based on the fact that compensation was received with Illinois public and private finds, and that St. Margaret Hospital placed advertisements in the Chicago yellow pages. In the case at bar, the two factors above were present along with others but the Fourth Circuit still reversed, holding that the defendant's contact was not purposeful and significant.

In a recent Ninth Circuit opinion, Cubbage -v- Merchent, 732 F.2d 1476 (9th. Cir. 1984), cert. denied, ____U.S.____, 105 S.Ct. 1359 (1985), that Court held that a patient who was treated at a hospital just over the State border can sue in his own state. Similiarly, in a recent New Mexico case, Kathrein -v- Parkview Meadows, Inc., __ N.M._____, 691 P.2d 462 (N.M. 1984), the Supreme Court of New Mexico held where the

defendant advertised its alcoholism treatment center in the yellow pages of the Albuquerque telephone directory and the defendant solicited his referal of patients from an Albuquerque director, this constituted minimum contacts as required by International Shoe, supra. Certainly, the seven contacts established in the case at bar would easily fit the criteria established in the Cubbage and Kathrein cases.

The Fourth Circuit cited Hume -v- Durwood Medical Clinic, Inc., ___S.C.___, 318 S.E.2d 119 (S.C. App. 1984), which held that where defendant Medical Clinic engaged in a course of treatment of a South Carolina resident in their offices in North Carolina and provided follow-up care by mail and telephone, these actions did not constitute sufficient contacts for South Carolina to exercise in personam jurisdiction. The South

Carolina Supreme Court has now accepted certiorari and that case is still pending.

The Circuits and the State Courts are at both ends of the spectrum concerning the sufficiency of minimum contacts. The Fourth Circuit went so far as to belabor the meaning of the word "require" in the seventh enumerated factor in the case at bar. The District Court in the case at bar held "as a practical matter" that Aiken residents were "required" to seek care at Richmond County Hospital. The Court explained in its Order that it meant it was far more convenient for Aiken residents to go to Augusta than to any South Carolina hospital with advanced facilities. The Fourth Circuit completely ignored this contact in order to strengthen their position that personal jurisdiction was not warranted in this case.

Considering the fact that the two

cities are in different states but only across the river from each other, the standard enunciated by this Court in Worldwide Volkswagen -v- Woodson, 444 U.S. 286 (1980), is significant. The fundamental rule must be tempered by considerations given to the convenience of the parties, the interstate judicial system's interest in obtaining the most efficient resolution of controversies, and the shared interests of the states in furthering fundamental substantive social policies. Id., at 292.

CONCLUSION

For the reasons stated above, the Petition for Writ of Certiorari should be granted.

Respectfully submitted,
A. CAMDEN LEWIS
DARYL G. HAWKINS
Post Office Box 11208
Columbia, S.C. (803) 771-8000
Attorneys for Petitioners

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 84-1024

ALAN W. WOLF and GAIL S. WOLF,

Appellees,

vs.

RICHMOND COUNTY HOSPITAL AUTHORITY,

Appellant.

Appeal from the United States District Court for the District of South Carolina, at Aiken. Charles E. Simons, Jr. District Judge. (C/A 83-1533-6)

Argued: August 9, 1984
Decided: October 4, 1984

Before RUSSELL, HALL and CHAPMAN, Circuit Judges:
Wyck A. Knox, Jr. (Ted H. Clarkson, Knox & Zacks, P.C.; David A. Brown, Henderson, Salley, Lynn, Farmer, Brown & Tucker on brief) for Appellant; Daryl G. Hawkins (A. Camden Lewis, Austin & Lewis on brief) for Appellees.

Camden Lewis, Austin & Lewis on brief) for Appellees.

CHAPMAN, Circuit Judge:

The issue in this appeal is whether a Georgia hospital's contacts with the State of South Carolina are sufficient to constitute "doing business" for purposes of obtaining personal jurisdiction under the South Carolina Long-Arm Statute. We find that the hospital's contacts are not purposeful, systematic or significant enough to warrant the exercise of jurisdiction in light of due process guarantees and this court's standard that the contacts with the forum state be "fairly extensive" when the cause of action arises outside that state. We, therefore, reverse the decision of the district court and grant defendant's motion to dismiss.

I

This is a diversity jurisdiction case in which Alan and Gail Wolf allege that their infant son was injured as a result of actions taken by agents of University Hospital, a public hospital located in the City of Augusta and in Richmond County, Georgia. The hospital is owned and operated by the defendant, Richmond County Hospital Authority (Hospital Authority), a public authority created under the Georgia Hospital Authorities Law. The Hospital Authority originally instituted suit in the Civil Court of Richmond County against the Wolfs for nonpayment of a bill incurred at University Hospital. The Wolfs answered and counterclaimed with allegations of medical malpractice. Georgia residents at the time of the alleged malpractice and at the time of the commencement and answer to the

Wolfs moved to Aiken County, South Carolina before filing the present action. Aiken County and Richmond County are separated by the Savannah River, the boundary between South Carolina and Georgia. The defendant moved to dismiss this action pursuant to Federal Rule of Civil Procedure 12(b)(2) for lack of personal jurisdiction. Three affidavits were submitted to the district court, two from officials of the South Carolina Department of Health and Environmental Control (DHEC) and one from the Executive Director of the Richmond County Hospital Authority. Based on these affidavits and on facts stated at a hearing, the district court denied the motion to dismiss. The court made the following seven findings of fact:

> 1. The South Carolina Department of Health and Environmental Control (DHEC) has authorized Augusta Hospital to receive payment from the State of South

Carolina for residents of Aiken County, South Carolina, seeking certain maternity and neonatal services at University Hospital.

2. University Hospital received payments from Aiken County Council as reimbursement for treatment of residents of Aiken County who are indigent.

3. Although Richmond County Hospital Authority has no hospital or medical facility located in South Carolina, the University Hospital does receive medicaid/medicare reimbursements for qualified South Carolina residents treated at University Hospital.

4. University Hospital is listed in the yellow pages of the telephone directory for North Augusta, South Carolina, a city located in Aiken County, South Carolina.

5. University Hospital is under contract to provide laundry services to the Edgefield County Hospital in South Carolina.

6. University Hospital derives a substantial amount of revenue from treatment of South Carolina residents; defendant admitted in oral argument that approximately one-fifth (1/5) of University Hospital's income is obtained from South Carolina residents.

7. University Hospital is a member of the East Central Georgia Health Services Agency, Inc. This agency was created to coordinate health care needs in its district, which district includes Aiken County, South Carolina. This is the only such district in South Carolina that crosses state lines. While this agency does not directly have jurisdiction over patient admission, the effect of University Hospital's membership in the agency is to require South Carolina residents in Aiken County as a practical matter to receive secondary and tertiary[1] level care from University Hospital. This is because the agency has jurisdiction over capital expenditures and construction, as well as issuing certificates of need. The purpose of the agency is to avoid duplication of expensive facilities. Since University Hospital is well equipped with such advanced medical facilities and Aiken County Hospital is also within the Agency's district, Aiken Community Hospital does not receive the advanced equipment. The Agency's efforts to avoid duplication therefore require Aiken County residents to seek

---

[1]At oral argument the court was informed that tertiary care is the highest level of care avaliable at a hospital.

> secondary and tertiary level care from the University Hospital in Augusta, Georgia, since it is the closest and most convenient facility of its kind.

II

The Hospital Authority makes two arguments. First, it contends that the district court's finding of fact that South Carolina residents in Aiken County are "required" to seek health care from University Hospital is clearly erroneous. Second, defendant argues that, on the basis of the district court's first six findings of fact and other facts in the record, Plaintiffs have not established "fairly extensive" contacts of University Hospital with the State of South Carolina required for the exercise of personal jurisdiction.

The Hospital Authority contends that there is no evidence in the record to support

the district court's finding of fact number seven. In this finding the court considered the relationship of the East Central Georgia Health Services Agency, Inc. to the provision of health care in the Richmond County, Georgia and Aiken County, South Carolina area and concluded that "the effect of University Hospital's membership in the [health services] agency is to require South Carolina residents in Aiken County as a practical matter to receive secondary and tertiary level care from University Hospital." In its final finding of fact the court also stated that "[t]he Agency's efforts to avoid duplication therefore require Aiken County residents to seek secondary and tertiary level care from the University Hospital in Augusta, Georgia, since it is the clo sest and most convenient facility of its

kind." Plaintiffs argue that this finding is supported by one of the affidavits and by a factual allegation in their complaint which, they contend, must be accepted as true for purposes of a motion to dismiss.

Examining first the affidavits presented to the district court, we find that defendant submitted an affidavit in which the affiant specifically stated that "South Carolina residents are under no compulsion or requirement to seek secondary and tertiary level care from University

Hospital."[2] This affidavit also provided that "University Hospital has no obligation to admit a patient who is a resident of South Carolina." While conceding that Aiken County residents are under no "compulsion" to seek health care from University Hospital, plaintiff argues that finding of fact number seven is supported by paragraph four of an affidavit prepared by the DHEC's Division of Certification of Need of

---

[2]In his affidavit, the Executive Director of the Hospital Authority stated:

> South Carolina residents are under no compulsion or requirement to seek secondary and tertiary level care from University Hospital and the existence of the East Central Georgia Health Systems Agency, Inc., and membership therein has no effect on where patients are required to seek treatment. The health system agencies only have jurisdiction over capital spending and construction, not over patient admissions.

the Bureau of Health Facilities and Services Development. This paragraph provides:

> Aiken County is included within the East Central Georgia Health Service Area which is the only HSA that crosses state lines in South Carolina. Under the Certificate of Need program, the review and approval of capital expenditures and expansion of hospital services for the sole hospital located in Aiken County, the Aiken Community Hospital, would take into consideration facilities and services available at Augusta hospitals, including University Hospital, and the utilization of such services by Aiken County residents. Any unnecessary duplications would be avoided. Likewise, approval for the development and expansion of services in Augusta hospitals would be based in part upon the utilization of those hospitals by Aiken County residents.

In analyzing the affidavits, we

do not find that Aiken County residents are "required" to seek care in Georgia. The affidavits suggest that certain medical facilities are available at University Hospital that are not available at the hospital located in Aiken County and that the purpose of the health systems agency is to avoid duplication of facilities and services in an area. This planning function, however, does not extend to controlling patient admissions or assigning a certain person to a certain hospital. Plaintiff seeks to support the district court's conclusion that "as a practical matter" Aiken County residents are "required" to seek care at University Hospital by pointing out that the hospital is a thirty-minute drive from Aiken whereas the other two cities in South Carolina with equivalent facilities are over an hour or two and one-half hours

away from Aiken. This fact, however, does not establish that Aiken residents are "required" to seek care at the hospital. People and their physicians choose hospitals for a variety of reasons. Proximity is merely one of those reasons. We find that use of the term "require," which has the connotation of certain persons being compelled to go to certain hospitals, is not supported by the affidavits.

Plaintiffs also argue that the finding is supported by their complaint in which they allege that the citizens of North Augusta and Aiken, South Carolina are "forced to rely upon the University Hospital to provide them secondary and tertiary level care" by the operation of the East Central Georgia Health Planning Agency District. Plaintiffs' argument with respect to the complaint is that, on a motion to dismiss, the Plaintiffs'

factual allegations must be accepted as true.

This argument, however, overlooks the fact that the allegation in the complaint was controverted by Defendants' affidavit (compare footnotes two and three, supra). "In ruling on a motion to dismiss for lack of personal jurisdiction, the allegations of the complaint, except insofar as controverted by the defendant's affidavit, must be taken as true." Black v. Acme Markets, Inc., 564 F.2d 681, 683, n.3 (5th Cir. 1977). The statement in defendant's affidavit that "South Carolina residents are under no compulsion or requirement to seek . . . care from University Hospital" was not in turn controverted by statements in plaintiffs' affidavits. See O'Hare International Bank v. Hampton, 437 F.2d 1173 (7th Cir. 1971) (because affidavts filed pursuant to Fed.R.Civ.P. 12(d) contained

contradictory factual allegations with respect to personal jurisdiction, court accepted as true for purposes of appeal, facts related in plaintiff's affidavits and complaint) Nor are the facts upon which the jurisdictional issue is based so closely intertwined with the facts involving the merits of the case that a decision on personal jurisdiction should have been postponed until trial. See 2A _ Moore's Federal Practice ¶12.16 (1984); Hare v. Family Publications Service, Inc., 334 F.Supp. 953, 956 (D.Md. 1971). Further, in its order deciding the motion to dismiss the district court made no mention of assuming the truth of the allegation in plaintiff's complaint.

When a presumption of validity is not applied to the factual allegation in paragraph IV[3] of plaintiff's complaint, we

---

[3]Paragraph IV of the complaint provi-

are left with the definite and firm convic-

---

footnote 3 continued:
des:

> In operating the said University Hospital the defendant, Richmond County Hospital Authority, has significant contacts with the State of South Carolina, as University Hospital is a regional referral medical center servicing North Augusta and Aiken, South Carolina and environs. It lists University Hospital in the telephone directories for North Augusta and Aiken, South Carolina, and otherwise promotes and markets its services to citizens of South Carolina. It regularly receives,admits and treats patients who are residents of the Aiken, South Carolina area, anbd both Aiken, South Carolina and Agusta, Georgia are included in the East Central Georgia Health Planning Agency District by operation of which the citizens of North Augusta and Aiken, South Carolina are forced to reyl upon the University Hospital to provide them secondary and tertiary level care, and the University Hospital provides primary, secondary and tertiary medical care to a significant number of citizens of the Aiken, South Carolina area on a regular basis, for which it receives substantial federal funding, which would not be available to it. (Emphasis added)

tion that a mistake has been committed by the district court in the conclusion that South Carolina residents are "required" to seek care at University Hospital. United States of America v. United States Gypsum Company, 333 U.S. 364, 395 (1948). This finding of fact is, therefore, clearly erroneous.

III

The question is whether, based on the first six findings of facts which defendant does not contest, the hospital has sufficient contacts with South Carolina to subject the Hospital Authority to personal jurisdiction. Where federal jurisdictlon is based on diversity of citizenship a two-part test is to be applied to determine questions of personal jurisdiction. Hardy v Pioneer

Parachute Co., 531 F.2d 193, 195 (4th Cir. 1976). First, whether there is statutory authority for the exercise of jurisdiction under the laws of South Carolina and second, whether the exercise of jurisdiction complies with federal constitutional standards of due process. Id. The statutory authority is clear. The Wolfs assert personal jurisdiction on the basis of S.C.Code Ann. 36-2-802 which provides:

> A court may exercise personal jurisdiction over a person domiciled in, organized under the laws of, doing business, or maintaining his or its principal place of business in, this State as to any cause of action.

The long-arm statutes of South Carolina have consistently been interpreted to provide for jurisdiction to the full extent permissible under the due process

clause of the fourteenth amendment. Ratliff v. Cooper Laboratories, Inc., 444 F.2d 745, 747 (4th Cir. 1971)

The legal standard to be applied in the due process analysis is well established. Where the defendant is not present in the forum, the defendant must have "certain minimum contacts with [the forum state] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945). Within the broad principle of International Shoe, different statutory provisions and different standards apply in cases where the contact with the state gives rise to the putative cause of action (S.C.Code Ann. 36-2-803) and where, as in the instant case, Plaintiff's claims arise totally outside of the state. (S.C Code.

Ann. 36-3-802). A more stringent standard is applied when, as in the case at bar, Section 36-2-802 is relied upon. Long v. Baldt, 464 F.Supp. 269, 275, fn. 7 (D.S.C. 1979).

To establish personal jurisdiction over an out-of-state defendant under the "doing business" provision, the "contacts between [the defendant] and the State must be fairly extensive before the burden of defending a suit there may be imposed upon it without offending 'traditional notions of fair play and substantial justice.'" (citations omitted) Ratliff, supra. at 748. See also O'Neal v. Bicks Brokerage Co., 537 F.2d 1266, 1268 (4th Cir. 1976) ("[T]he sufficiency of contacts threshold is elevated when the cause does not arise in the forum state or derive from the foreign corporation's transactions in the state," citing

Lee v. Walworth Valve Co., 482 F.2d 297 (4th Cir. 1973) and Ratliff, supra. The Supreme Court has characterized the test to be applied when a Plaintiff's claim does not arise out of a defendant's activities in the forum state as whether the contacts are of a "continuous and systematic" nature. Helicopteros Nacionales de Colombia, S.A. v. Hall, 104 S.Ct. 1868 (1984).

The three cases in which the court has reviewed the questions of the sufficiency of contacts necessary for personal jurisdiction and the fairness of requiring a foreign defendant to litigate in the courts of South Carolina, when the cause of action arises in another state, O'Neal, supra; Lee, supra; and Ratliff, supra; provide the standard against which the instant case should be examined. The facts of the three cases were summarized in

O'Neal:

In Ratliff, the Court was presented with non-South Carolina citizens seeking to maintain an action in South Carolina District Court against two pharmaceutical companies for injuries occurring in other states. Although cognizant of the companies' minimum contacts in the state, we concluded that the suit could not be maintained in South Carolina because the injury did not arise out of activity in the forum state. This decision was dictated by the fact that South Carolina had no nexus and plaintiffs were attempting to avail themselves of South Carolina's lengthy statute of limitations.

In Lee, in contrast to Ratliff, we held that suit could be maintained in South Carolina by the executrix of an estate whose decedent was killed on the high seas. The executrix was a citizen and resident of South Carolina as was the decedent. Although recognizing that the cause of action did not occur in the forum state, we nevertheless concluded that South Carolina had a paternal interest in the recovery by one of its citizens of appropriate compensation. Lee, supra. at 299. Walworth Company did not maintain an office in South Carolina, owned no property in the state, and had no resident sales personnel. Walworth,

> however, sent sales personnel to South Carolina soliciting business for approximately eighty (80) days annually. This factor coupled with sales exceeding one hundred thousand dollars annually led us to conclude that Walworth's contacts were sufficient to fall within the ambit of in personam jurisdiction of South Carolina.
>
> Applying these standards to this appeal, we hold that Hicks' contacts with South Carolina are de minimis. The sole thread linking Hicks to South Carolina is arranging for the transportation of cotton to South Carolina. These transactions were conducted in Mississippi with the Mississippi agent of a South Carolina entity. Over a three-year period, these transactions occurred intermittently resulting in meager remuneration. Hicks has never operated or established its "presence" in South Carolina.

O'Neal, 537 F.2d at 1268.

The Wolfs' attempt to place themselves within the factual situation found in Lee; however, the facts do not fit. In Lee we emphasized the State's paternal interest in protecting its residents and

that such interest can be considered in determining whether South Carolina courts may exercise jurisdiction over a nonresident corporation. In Lee, however, there were other facts that warranted the exercise of jurisdiction over the nonresident corporation. For three years salesmen with the corporation had spent approximately eighty days each year soliciting ' siness in the state and the corporation had made sales amounting to $100,000 to South Carolina customers. In _ Lee, the defendant contesting jurisdiction had actively engaged in substantial commerce within the borders of South Carolina. In the case at bar there has been no finding that University Hospital ever "solicited" business in South Carolina. The affidavit submitted by defendant affirmed that "University Hospital does not advertise or otherwise solicit or encourage

South Carolina residents to seek treatment at University Hospital."

The contacts cited in the first, second, third and sixth findings of fact establish that University Hospital treats South Carolina residents and receives payments (either from state or local governmental bodies or from the residents themselves) for services rendered. The fourth contact cited the listing of University Hospital in the North Augusta, South Carolina telephone directory does not indicate a purposeful contact in order to generate revenue but instead illustrates the proximity of and the close ties existing between Augusta, Georgia and North Augusta, South Carolina. The court did not find that University Hospital had obtained paid advertisements in the North Augusta telephone directory. See also Kennedy v. Ziesmann, 526

F.Supp. 1328 (E.D.Ky. 1981) (court found that a telephone listing alone, without additional advertising or other solicitation did not amount "in and of itself to regular solicitation of business" such that a physician in a neighboring state would be subject to jurisdiction in the state where the directory was distributed).

The only purposeful contact shown by plaintiffs is the provision of laundry services to the county hospital in Edgefield, South Carolina. This contact is, however, de minimis and the cause of action did not arise from this contact. The seventh finding of fact, excepting the portion that this court finds clearly erroneous, describes the activities of the East Central Georgia Health Services Agency and not activities initiated by University Hospital. This finding shows that the Hospital Authority is subject to

regulations imposed by the Congress of the United States in regard to the development and distribution of health care facilities. See, 42 U.S.C. 300(1) -300(1)(4) (governing the establishment and duties of health system agencies). The fact that the Hospital Authority complies with the requirements of federal law and that this law establishes an agency affecting both Georgia and South Carolina does not indicate purposeful, voluntary activity in South Carolina on the part of the defendant.

Plaintiff also argues that the hospital's contacts with South Carolina are more extensive than those of the defendant in O'Neal because University Hospital receives one-fifth of its income from South Carolina patients, as opposed to the "meager remuneration" received by the O'Neal defendant from dealings in South Carolina. In making such a

comparison, however, the fundamental nature of the defendant must be recognized. "Cases involving medical services are quite different from those involving other commercial activity." Hume v. Durwood Medical Clinic, Inc., No. 0196, slip. op. at 22 (S.C. Ct. App. June 11, 1984). The cases from other jurisdictions involving hospitals and physicians are instructive. And, although federal law is controlling on the issue of due process, Amba Marketing Systems, Inc. v. Jobar International, Inc., 551 F.2d 784,789 (9th Cir. 1977), a recent decision of the South Carolina Court of Appeals, Hume v. Durwood, supra, is persuasive. Hume involved a medical malpractice action brought by the administratrix of a South Carolina decedent against, among others, a North Carolina corporation doing business as a medical clinic and certain North Carolina physicians.

Deposition testimony revealed the degree and nature of the contacts between the defendants, the decedent and the State of South Carolina. The depositions reflected that, although they had a number of patients from South Carolina, the clinic and physicians did not solicit business in South Carolina. None of the clinic's staff physicians were licensed to practice medicine in South Carolina. The clinic and physicians billed South Carolina patients by mail and one of the physicians had written a letter to the decedent in South Carolina furnishing medical advice. Finding that the exercise of jurisdiction in South Carolina would not be consonant with due process, the court quoted from Gelineau v. New York University Hospital, 375 F.Supp. 661, 667 (D.N.J. 1974):

> Unlike a case involving involuntary interstate or inter-

> national economic activity. . .the residence of a recipient of personal services rendered elsewhere is irrelevant and totally incidental to the benefits provided by the defendant at his own location. It is clear that when a patient travels to receive professional services without having been solicited. . . then the client, who originally traveled to seek services apparently not available at home, ought to expect that he will have to travel again if he thereafter complains that the services sought by him in the foreign jurisdiction were there rendered improperly.

Hume, slip op. at 22.

The court also approved the reasoning of Gelineau that the state's interest in insuring that its citizens do not have to leave the state to file suit must be balanced against the burden to those providing the medical services of having to

defend themselves in a foreign forum. Such a burden might ultimately have the counter productive result of reducing the availability of medical services to residents of the forum state. See also Wright v. Yackley, 459 F.2d 28 (9th Cir. 1972); But see Cubbage v. Merchent, 732 F.2d 1476(9th Cir. 1984) (Hug., J., dissenting). (majority found "no evidence in the record" to indicate that subjecting foreign defendants to jurisdiction would have a "'chilling effect'" on defendants' treatment of other residents of forum state).

The Hume court concluded that the conduct of the physicians and the clinic did not show "an intent on their part to purposefully avail themselves of the privilege of providing medical services to South Carolina residents on a systematic basis." Id.

The cases relied on by the Wolfs in which doctors or medical facilities were found to be subject to the jurisdiction of a foreign court are distinguishable because, in these cases, the defendant either actively solicited or encouraged the nonresident to travel to their facility for treatment or had patient referral or transfer contacts. Cubbage v. Merchent, supra (defendant physicians applied for and received Medi-Cal numbers in order to receive reimbursement from forum state for services rendered to eligible residents of forum state; defendant hospital took out a paid advertisement in yellow pages of telephone directory distributed in forum state); Lemke v. St. Margaret's Hospital, 552 F.Supp. 833 (N.D.Ill. 1982) (finding of solicitation made by district court - defendant advertised in forum state yellow

pages); Braman v. Mary Hitchcock Memorial Hospital 631 F.2d 6 (2d Cir. 1980) (defendants, pursuant to agreements with forum state hospitals, served as consultants and supplied back-up services to hospitals in forum state - on remand district court instructed to determine whether those and other contacts distinguish the case from another case where personal jurisdiction was not found because the defendant Hospital did not have "any agents in the forum state channeling patients" to it); Soares v. Roberts, 417 F.Supp. 304 (D.R.I. 1976) (finding by district court that nonresident Hospital "knowingly solicited and facilitated referrals of [forum state] residents on a continuing basis" and placed advertisements in its home-state newspaper and on television which were widely received in the forum

state); S. R. V. City of Fairmont, 280 S.E.2d 712 (W. Va. 1981) (defendant medical corporation found to derive a direct economic benefit from solicitation made by an abortion clinic in defendant's home state for abortion business from forum state).

IV

In conducting the due process analysis and balancing issues of fairness and convenience to the parties, questions also arise of whether the plaintiff would suffer hardship in the event of dismissal and whether there is "any other state whose courts might provide a more likely forum," Lee v. Walworth Valve, supra, 482 F.2d at 299. In the instant case the alleged cause of action arose in Georgia at a time when plaintiffs were Georgia residents, thus involving only Georgia residents. An action, which is still

pending, was originally brought by the defendant in a Georgia court of limited jurisdiction ($25,000). At oral argument this court was informed that, in order to prevent the statute of limitations from running, plaintiff has filed an action in Richmond County Superior Court, a court of unlimited jurisdiction. It appears, therefore, that dismissal of the case brought in South Carolina will not prejudice the plaintiff and that Georgia is the logical forum.

We conclude, therefore, Hospital Authority lacks sufficient contacts with the State of South Carolina to be subject to the jurisdiction of its courts. To do so would place a burden upon the defendant inconsistent with "traditional notions of fair play and substantial justice."

REVERSED.

IN THE DISTRICT COURT OF

THE UNITED STATES APPEALS

FOR THE DISTRICT OF SOUTH CAROLINA

AIKEN DIVISION

Civil Action 83-1533-6

ALAN W. WOLF and GAIL S. WOLF,	)	
Plaintiffs,	)	
-versus-	)	O R D E R
RICHMOND COUNTY HOSPITAL AUTHORITY,	)	
Defendants.	)	

This matter comes before the court on motion of the defendant to dismiss for lack of personal jurisdiction pursuant to Fed.R.Civ.P. 12(b)2. In this action plaintiffs, formerly Georgia residents but now residents of South Carolina, seek to recover damages for injuries allegedly inflicted on

their infant son by agents of University Hospital, a facility owned and operated by the defendant, Richmond County Hospital Authority. The defendant is a public authority created under the Georgia Hospital Authorities Law. University Hospital is located in Augusta, Georgia.

The relevant allegations of the Compalint are as follows: Plaintiffs' son, Stephen Collin Wolf, was delivered by Caesarian Section at University Hospital in Augusta, Georgia. The plaintiffs allege that Stephen was born a normal, healthy child and that the delivering physician left written orders for his care. Plaintiffs further allege that due to the Hospital's failure to provide adequate medical care and attention, the child is now severely retarded and has developed other serious complications. Plaintiffs further contend that while

University Hospital is located in the State of Georgia, the contacts University Hospital maintains with the State of South Carolina are such that University Hospital is doing business in South Carolina.

The question therefore before the court is whether Hospital is doing business in the State of South Carolina so as to invoke this court's jurisdiction under South Carolina's Long-Arm Statute, S.C. Code Ann. Section 36-2-802 (1976). Section 36-2-802 (1976) provides in relevant part "[A] court may exercise personal jurisdiction over a person. . .doing business. . .in this State as to any cause of action." This court concludes that University Hospital is doing business in South Carolina so as to confer this court's jurisdiction under Section 36-2-802 (1976).

The test for doing business within

the meaning of Section 36-2-802 was given in Ratliff v. Cooper Laboratories, Inc., 444 F.2d 745 (4th Cir. 1971). In Ratliff the Fourth Circuit declared that if a plaintiff's injury does not arise out of some thing done in the forum state, then other contacts between the corporation and the state must be fairly extensive. 444 F.2d at 748. That court has also stated that "the sufficiency of contacts threshold is elevated when the cause does not arise in the forum state or derive from the foreign corporation's transactions in the state." O'Neal v. Hicks Brokerage, 537 F.2d 1266, 1268 (4th Cit. 1976).

To determine what is "fairly extensive" the courts have differed to the standards imposed by the Due Process Clause of the United States Constitution. Ratliff v. Cooper, supra; O'Neal v. Hicks Brokerage

Company, supra; Nelepovitz v. Boatwright, 442 F.Supp. 1336 (D.C.S.C. 1977). As stated in O'Neal, "South Carolina has extended the jurisdiction of its courts to the outer perimeter allowed by due process." 537 F.2d at 267-268. The modern test for constitutional assertion of personal jurisdiction over non-residents was first espoused in International Shoe Co. v. Washington, 326 U.S. 310 (1945), and remains the law in South Carolina today. Shealey v. Challenger Manufacturing Co., 304 F.2d 102 (4th Cir. 1962). In International Shoe, the United States Supreme Court held that due process requires that before a defendant who is not present in the forum state may be subjected to the personal jurisdiction of that forum state, he must have contacts with it such that maintenance of the suit does not offend "traditional notions of fair play and substantial justice.

International Shoe, 326 U.S at 316. Therefore, since the defendant is not present in South Carolina and the cause of action did not arise in South Carolina, constitutionally subjecting the defendant to jurisdiction in this state requires the plaintiffs to show defendant has sufficient contacts with the State of South Carolina so as not to offend "traditional notions of fair play and substantial justice."

The University Hospital's contacts with the State of South Carolina clearly exceed the "fairly extensive" test set out in the Ratliff case. The following list is illustrative:

1. The South Carolina Department of Health and Environmental Control (DHEC) has authorized Augusta Hospital to receive payment from the State of South Carolina for residents of Aiken County, South Carolina,

seeking certain maternity and neonatal services at University Hospital.

2. University Hospital received payments from County Council as reimbursement for treatment of residents of Aiken County who are indigent.

3. Although Richmond County Hospital Authority has no hospital or medical facility located in South Carolina, the University Hospital does receive medicaid/medicare reimbursements for qualified South Carolina residents treated at University Hospital.

4. University Hospital is listed in the yellow pages of the telephone directory for North Augusta, South Carolina, a city located in Aiken County, South Carolina.

5. University Hospital is under contract to provide laundry services to the Edgefield County Hospital in South Carolina.

6. University Hospital derives a substantial amount of revenue from treatment of South Carolina residents; defendant admitted in oral argument that approximately one-fifth (1/5) of University Hospital's income is obtained from South Carolina residents.

7. University Hospital is a member of the East Central Georgia Health Services Agency, Inc. This agency was created to coordinate health care needs in its district, which district includes Aiken County, South Carolina. This is the only such district in South Carolina that crosses state lines. While this agency does not directly have jurisdiction over patient admission, the effect of University Hospital's membership in the agency is to require South Carolina residents in Aiken County as a practical matter to receive secondary and tertiary level care

from University Hospital. This is because the agency has jurisdiction over capital expenditures and construction, as well as issuing certificates of need. The purpose of the agency is to avoid duplication of expensive facilities. Since University Hospital is well equipped with such advanced medical facilities and Aiken County Hospital is also within the Agency's district, Aiken Community hospital does not receive the advanced equipment. The Agency's efforts to avoid duplication therefore require Aiken County residents to seek secondary and tertiary level care from the University Hospital in Augusta, Georgia, since it is the closest and most convenient facility of its kind.

Although it is true that "the sufficiency of contacts threshold is elevated when the cause of action does not arise in the forum state or derive from the foreign

corporation's transactions in the state." O'Neal at 1268; nevertheless, the contacts that University Hospital maintains with South Carolina clearly reach the elevated level.[1]

The rationale of the court in Lee v. Walworth Valve Company, 482 F.2d 297 (4th Cir. 1973), is supportive of this view. In Lee the plaintiff, a South Carolina resident, was the executrix of her husband's estate. Her husband had been killed on the high seas as a result of a defective valve manufactured by the defendant. The defendant moved to dismiss the action for lack of jurisdiction. The court denied the motion and stated:

> The interest of South Carolina is substantial, however, for it has a paternal interest in the recovery by one of its citizens of appropriate compensation, if there is a substantive cause of action. To the extent that Mrs. Lee, or she and her dependents, deprived of the support of

---

[1]The defendant has urged Ratliff v. Cooper, 444 F.2d 745 (4th Cir. 1971) as support for its theory that the elevated level

her husband, might become a public charge or charges, South Carolina has an immediate interest in her vindication of any private right of action she may have for the wrongful death of her husband.

. . . Our holding in Ratliff was dictated by the fact that South Carolina had no interest in or connection with the controversy. The out-of-state plaintiffs sought to maintain the action in South Carolina solely for the purposes of

---

footnote 1 continued:
of minimum contacts has not been met. The Ratliff decision, however, is easily distinguishable from the case at bar. Ratliff involved two plaintiffs who sued two drug manufacturers for injuries sustained by their products. The plaintiffs had no connection whatsoever with South Carolina. The plaintiffs were not South Carolina residents and their causes of action arose outside of the State of South Carolina. As the court states in Ratliff:

> Plaintiffs' only interest in South Carolina in its relatively long statute of limitations (six years), and Plaintiffs' only contact with South Carolina is the bringing of these lawsuits for the sole purpose of availing themselves of that statute - the limitation periods have run in all other states having any connection with the claims presented.

Such is not the case in the action at bar.

> availing themselves of South Carolina's relatively long statute of limitations...
>
> . . . The frequency and regularity of (the defendant's) activity in South Carolina make it fair to hold is answerable in that State to Mrs. Lee."

The frequency and regularity of defendant's activity in South Carolina and with South Carolina residents make it fair to hold it answerable in South Carolina.

Jurisdiction by South Carolina Courts over the defendant is further buttressed by the fact that foreseeability is important in a due process analysis. As stated by the Supreme Court in World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980), the foreseeability that is critical to due process analysis is whether the defendant's conduct with the forum state is such that he should reasonably anticipate being haled into court there. World-Wide at 567.

University Hospital has such a regular course of conduct with South Carolina that being haled into court in this State should come as no surprise.

The recent case of Lemke v. St. Margaret Hospital, 552 F.Supp. 833 (N.D. Ill. 1982), further supports this conclusion. In Lemke the court held that an Indiana doctor who regularly treated Illinois patients in a hospital located in Indiana that regularly treated and solicited patients could be deemed to be "doing business" in Illinois for purpose of personal juris-diction. The court declared:

> . . . to the extent that the hospital regulary solicits and refers Illinois patnents[sic] for Dr. Patel, as a member of the hospital staff, he may be considered as purposefully holding himself out to Illinoise residents as a provider of medical care. 552 F.Supp. 833, 838. (1982).

The Lemke court continued:

> . . . it appears that a significant

> portion of the patients he treats live in nearby Illinois. Thus, it should be of no surprise when one of his Illinois patnents bring suit. 552 F.Supp. at 839.

It is in this state border context and with university Hospital's continuous and multiple contacts with South Carolina citizznes that form the basis of jurisdiction.[2]

---

[2]Defendant cites the case of Kennedy v. Zeisman, 526 F.Supp. 1329 (E.D.Ky. 1981) for the proposition that merely because a physician's name is listed in a foreign state's phone book, the physician is not subject to suit in that state. This court agrees that this alone is not sufficient to confer jurisdiction in South Carolina. In the case at bar, however, a phone listing is not the sole contact University Hospital has with the State of South Carolina. This court does not hold that each individual contact University Hospital has with South Carolina is alone sufficient to confer jurisdiction. What this court does hold is that looking at all of the contacts University Hospital has with the State of South Carolina, it does not offend "traditional notions of fair play and substantial justice," to subject them to suit here. International Shoe, 326 U.S. at 316.

Therefore, jurisdiction is properly before the court and the Motion to Dismiss is denied.

This court is of the opinion, however, that this Order involves controlling question of law to which is a substantial difference of opinion. An immediate appeal from the ground for Order may materially advance the ultimate termination of the litigation, therefore, pursuant to 28 U.S.C. Section 1292(b), I hereby certify this Order for application to the Court of Appeals for an immediate appeal.

AND IT IS SO ORDERED.

Columbia, S. C.

October 25, 1983. Charles E. Simons, Jr.

UNITED STATES DISTRICT JUDGE

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
NO. 84-1024

ALAN W. WOLF and GAIL S. WOLF,

Appellees,

vs

ICHMOND COUNTY HOSPITAL AUTHORITY,

Appellant.

Appeal from the United States District Court for the District of South Carolina, at Aiken. Charles E. Simons, Jr. District Judge.

The appellee's petition for rehearing and suggestion for rehearing en banc were submitted to this Court. In a requested poll of the Court, Judges Widener, Murnaghan, Sprouse and Ervin voted to rehear the case in banc; and Judges Winter, Russell, Hall, Phillips, Chapman, Wilkinson and Sneeden voted against rehearing the case in banc. As a majority of the judges voted to deny rehearing in banc, and

As the panel considered the petition

for rehearing and is of the opinion that it should be denied,

IT IS ADJUDGED AND ORDERED that the petition for rehearing and suggestion for rehearing in banc are denied.

Entered at the direction of Judge Murnaghan.

For the Court,

March 6, 1985 John M. Greacen, Clerk

AFFIDAVIT OF SERVICE

In accordance with Rules of the Supreme Court of the United States, I hereby certify that I have this 17th day of June, 1985 mailed the required copies of this Petition for Writ of Certiorari in the Clerk's Office of the Supreme Court of the United Stated and further certify that I have mailed this 17th day of June, 1985 three copies to Wyck A. Knox, Jr., Esquire and Ted H. Clarkson, Esquire, of the Law Firm of KNOX & ZACKS, P.C., Attorneys for the Respondent, Post Office Box 2043, Augusta, Georgia 30903.

BY: Barbara E. Drowe
Lawyers Printing Co.
Post Office Box 1645
Richmond, Virginia 23219

This the 17th day of June, 1985.

Sworn to before this 17 day of June, 1985.

84-1961

Office-Supreme Court, U.S.
FILED
JUN 24 1985
ALEXANDER L. STEVAS,
CLERK

NO. _____

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

ALAN W. WOLF AND GAIL S. WOLF,

PETITIONERS

V.

RICHMOND COUNTY HOSPITAL AUTHORITY,

RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE FOURTH CIRCUIT

BRIEF IN RESPONSE TO PETITION FOR WRIT OF CERTIORARI

WYCK A. KNOX, JR.
(Counsel of Record)
TED H. CLARKSON
KNOX & ZACKS
Post Office Box 2043
Augusta, Georgia 30903
(404) 724-2622

BEST AVAILABLE COPY

28 pp

I. QUESTION PRESENTED FOR REVIEW

Whether the United States District Court for the District of South Carolina can exercise personal jurisdiction over the Richmond County Hospital Authority, a public authority created by the Georgia Legislature, in an action concerning an alleged tort committed in Georgia between parties who were then Georgia residents given the following circumstances:

1) The Richmond County Hospital Authority derives one fifth (1/5) of its revenue from South Carolina residents who come to Georgia for treatment.

2) Richmond County Hospital Authority's hospital is listed in the North Augusta, South Carolina yellow pages.

3) Richmond County

Hospital Authority has a laundry service contract with an Edgefield County, South Carolina hospital.

4) Richmond County Hospital Authority is within the jurisdiction of the East Central Georgia Health Services Agency, which agency has an impact on the distribution of health care resources in portions of Georgia and South Carolina pursuant to federal law, 42 U.S.C. §300L et seq.

TABLE OF CONTENTS

		PAGE
I.	QUESTION PRESENTED FOR REVIEW	i
II.	TABLE OF CONTENTS	iii
III.	TABLE OF AUTHORITIES	iv
IV.	STATEMENT OF THE CASE	1
V.	SUMMARY OF THE ARGUMENT	4
VI.	ARGUMENT	5
	A. LEVEL OF CONTACTS NECESSARY TO JUSTIFY THE EXERCISE OF JURISDICTION OVER THE AUTHORITY.	5
	B. THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT CORRECTLY FOUND THAT THERE WERE INSUFFICIENT CONTACTS TO WARRANT THE EXERCISE OF JURISDICTION OVER THE AUTHORITY.	7
VII.	CONCLUSION	18
VIII.	CERTIFICATE OF SERVICE	20

CITATION OF AUTHORITIES

CASES

	PAGES
Aylstock v. Mayo Foundation, 341 F.Supp 560 (D.Mont. 1972)	10
Cubbage v. Merchent, 732 F.2d 1476 (9th Cir. 1984)	11
Gelineau v. New York University Hospital, 375 F.Supp 661, 667 (D.N.J. 1974)	10
Glover v. Wagner, 462 F.Supp 308 (D.Neb. 1978)	10
Hardy v. Pioneer Parachute Company, 531 F.2d 193 (4th Cir. 1976)	6
Helicopteros Nacionales de Columbia, S.A. v. Hall, 104 S.Ct. 168 (1984)	7
Hume v. Durwood Medical Clinic, Inc., 318 S.E.2d 119 (S.C.App. 1984)	10, 15, 16

Hutton v. Piepgras,
451 F.Supp. 205 (S.D.N.Y. 1978) 10

International Shoe Company v.
Washington, 326 U.S. 310 (1945) 6

Kailieha v. Hayes,
536 P.2d 568 (Hawaii 1975) 11

Kathrein v. Parkview Meadows, Inc.,
102 N.M. 75, 691 P.2d 462 (N.M. 1984) 11

Kennedy v. Zeismann,
526 F.Supp. 1328 (E.D.Ky. 1981) 12

Kurtz v. Draur
434 F.Supp. 958 (E.D.Pa. 1977) 10

Lemke v. St. Margaret Hospital,
552 F.Supp 833 (N.D.Ill. 1982) 11

McAndrew v. Burnett,
374 F.Supp 460 (M.D.Pa. 1974) 10

Triplett v. R. M. Wade and Company,
261 S.C. 419, 200 S.E.2d 375 (1973) 6

Wright v. Yackley,
459 F.2d 287 (9th Cir. 1972) 10, 14

STATUTES

42 U.S.C. § 300L et seq.	ii, 13
S.C. Code Ann. § 36-2-802	6

STATEMENT OF THE CASE

This is a medical malpractice action brought against the Richmond County Hospital Authority (hereinafter "Authority"), an entity created by the Georgia legislature, which owns and operates University Hospital in Augusta, Georgia. The petitioners allege negligence on the part of the Authority in the caesarean section delivery of their son and his treatment thereafter at University Hospital. The Authority denies all allegations of negligence.

At the time of the delivery and the treatment of the child, the petitioners were residents of the State of Georgia. All services rendered to the child were performed in the State of Georgia. When the petitioners failed to pay the hospital for services rendered, the Authority filed suit against them in Georgia and perfected

service on them in Georgia. The petitioners counterclaimed for malpractice in the Georgia court.

Despite the pendency of their malpractice claim in the Georgia court, the petitioners, who had since moved to South Carolina, filed this action in the United States District Court for the District of South Carolina. The Authority answered and moved for dismissal for lack of personal jurisdiction. The District Court denied the motion, but the Court of Appeals for the Fourth District Circuit reversed and granted the motion to dismiss.

The jurisdictional facts on which the Court of Appeals based its decision were stated in the District Court's order and are as follows:

> 1. The South Carolina Department of Health and Environmental Control (DHEC) has authorized Augusta Hospital to receive payments from the State of South Carolina for residents

of Aiken County, South Carolina, seeking certain maternity and neonatal services at University Hospital.

2. University Hospital received payments from Aiken County Council as reimbursement for treatment of residents of Aiken County who are indigent.

3. Although Richmond County Hospital Authority has no hospital or medical facility located in South Carolina, the University Hospital does receive medicaid/medicare reimbursements for qualified South Carolina residents treated at University Hospital.

4. University Hospital is listed in the yellow pages of the telephone directory for North Augusta, South Carolina, a city located in Aiken County, South Carolina.

5. University Hospital is under contract to provide laundry services to the Edgefield County Hospital in South Carolina.

6. University Hospital derives a substantial amount of revenue from treatment of South Carolina residents; defendant admitted in oral argument that approximately one-fifth (1/5) of University Hospital's income is obtained from South Carolina residents.

(Appendix to Petition for Writ of

Certiorari at 36-37)

The District Court also found that South Carolina residents were required to seek secondary and tertiary level care from University Hospital because of the hospital's membership in the East Central Georgia Health Services Agency (App. 37). The Court of Appeals held this finding to be clearly erroneous (App. 20), and the petitioners do not challenge that conclusion in their petition.

SUMMARY OF THE ARGUMENT

The issue in this case is whether the United States District Court for the District of South Carolina can exercise personal jurisdiction over a Georgia hospital authority for an alleged tort committed, if at all, in the State of Georgia between what were then Georgia residents. The facts established before

the District Court do not show that the Authority solicited South Carolina residents, but rather that South Carolina residents unilaterally came to Georgia to be treated at the hospital and that the hospital received payment for that treatment. The only contact of the Authority in the State of South Carolina, as opposed to South Carolina residents' contacts with the Authority in Georgia, was a laundry service contract with an Edgefield County, South Carolina hospital. That contact is de minimis. Accordingly, the evidence failed to prove contacts of a systematic or continuous nature necessary to subject the Authority to the jurisdiction of the court in South Carolina.

ARGUMENT

I. LEVEL OF CONTACTS NECESSARY TO JUSTIFY

THE EXERCISE OF JURISDICTION OVER THE AUTHORITY.

The South Carolina Long-Arm Statute, S.C. Code Ann. § 36-2-802, extends the jurisdiction of the South Carolina courts to the limits of the due process guaranties of the Fourteenth Amendment; therefore, the issue in this case is whether due process prohibits the exercise of jurisdiction over the Authority. See Hardy v. Pioneer Parachute Company, 531 F.2d. 193 (4th Cir. 1976); Triplett v. R. M. Wade and Company, 261 S.C. 419, 200 S.E.2d. 375 (1973). Due process permits the exercise of personal jurisdiction over a non-resident only if the non-resident has had minimum contacts with the forum state such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice. International Shoe Company v. Washington, 326 U.S. 310 (1945). In a tort action where the tort was not

committed in the forum state, the minimum contacts must be of a "continuous and systematic" nature. Helicopteros Nacionales de Columbia, S.A. v. Hall, 104 S.Ct. 1868 (1984).

The undisputed facts in this case show that the plaintiffs were Georgia residents at the time their son was treated at the Authority's hospital and that all treatment was performed in Georgia. Under the standard discussed above, the District Court could exercise personal jurisdiction over the Authority in this tort action only if the petitioners proved that the Authority had contacts with South Carolina that were of a "systematic and continuous" nature.

II. THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT CORRECTLY FOUND THAT THERE WERE INSUFFICIENT CONTACTS TO WARRANT THE EXERCISE OF

JURISDICTION OVER THE AUTHORITY.

The six findings of fact upheld by the Court of Appeals can be grouped into roughly three categories. The first, second, third and sixth findings demonstrate that University Hospital treats South Carolina residents and receives payment for such treatments. The fourth finding of fact establishes that the hospital is listed in the yellow pages of North Augusta, South Carolina. The fifth finding shows a laundry service contract between the Authority and an Edgefield County Hospital. Additionally, the evidence shows that the Authority is subject to the jurisdiction of the East Central Georgia Health Services Agency, which coordinates the distribution of health care resources in a district which includes portions of Georgia and South Carolina. These facts do not establish contacts of a continuous and systematic

nature in South Carolina.

With regard to the treatment of South Carolina residents, the plaintiffs have failed to prove anything other than the fact that South Carolina residents voluntarily and unilaterally come to Georgia to seek care at University Hospital. This fact does not show purposeful conduct on the part of the Authority in South Carolina, but rather shows purposeful conduct on the part of South Carolina residents in the State of Georgia. Such facts routinely have been held to be insufficient to establish personal jurisdiction over non-resident health care providers.

> Unlike a case involving voluntary interstate or international economic activity . . . the residence of a recipient of personal services rendered elsewhere is irrelevant and totally incidental to the benefits provided by the defendant at his own location. It is clear that when a client or a patient travels to receive professional services without

> having been solicited . . . then the client, who originally travelled to seek services apparently not available at home, ought to expect that he will have to travel again if he thereafter complains that services sought by him in the foreign jurisdiction were therein rendered improperly.

Gelineau v. New York University Hospital, 375 F.Supp. 661, 667 (D.N.J. 1974).

Accordingly, the courts have generally held that they cannot exercise jurisdiction over non-resident health care providers for torts allegedly committed in the state where the health care provider resides. See, Wright v. Yackley, 459 F.2d 287 (9th Cir. 1972); Glover v. Wagner, 462 F.Supp. 308 (D.Neb. 1978); Hutton v. Piepgras, 451 F.Supp. 205 (S.D.N.Y. 1978); Kurtz v. Draur, 434 F.Supp. 958 (E.D.Pa. 1977); McAndrew v. Burnett, 374 F.Supp. 460 (M.D.Pa. 1974); Aylstock v. Mayo Foundation, 341 F.Supp. 560 (D.Mont. 1972); Hume v. Durwood Medical Clinic,

Incorporated, 318 S.E.2d. 119 (S.C.App. 1984); Kailieha v. Hayes, 536 P.2d. 568 (Hawaii 1975).

The petitioners seek to avoid the general rule by citing Lemke v. St. Margaret Hospital, 552 F.Supp. 833 (N.D.Ill. 1982); Cubbage v. Merchent, 732 F.2d. 1476 (9th Cir. 1984) cert. denied, 105 S.Ct. 1359 (1985); and Kathrein v. Parkview Meadows, Inc. 102 N.M. 75, 691 P.2d. 462 (N.M. 1984). These cases are not applicable because the health care providers in those cases had affirmatively solicited out-of-state patients. Because of the solicitations, a purposeful contact, the courts found the health care providers to be subject to the jurisdiction of the courts in the patients' home state. Solicitation has not been found in this case. The District Court did not find any solicitation. The Court of Appeals also concluded that the Authority did not

solicit South Carolina residents as patients, and on that basis, the Court of Appeals distinguished the cases relied upon by the petitioners.

The petitioners place a great deal of emphasis on the listing of University Hospital in the North Augusta, South Carolina telephone directory. They contend that this fact constitutes a contact with South Carolina sufficient to support jurisdiction. Petitioners, however, ignore the reality that the listing does not show a purposeful contact by the Authority with South Carolina but rather illustrates the proximity of and the close ties existing between Augusta, Georgia and North Augusta, South Carolina. Without purposeful activity on the part of the hospital, this contact does not support the exercise of jurisdiction. See, Kennedy v. Zeismann, 526 F.Supp. 1328 (E.D.Ky. 1981).

The only true contact of the Authority with South Carolina is the laundry contract between the Authority and an Edgefield County, South Carolina hospital. This contact is an isolated instance of the Authority conducting activities in South Carolina. It is totally unrelated to the malpractice action being prosecuted by the petitioners. As described by the Court of Appeals, this contact is "de minimis" and insufficient to justify the exercise of jurisdiction over the Authority by the District Court sitting in South Carolina (App. 26).

The final set of facts involves the East Central Georgia Health Services Agency, an agency created by federal law, 42 U.S.C. § 3001 et seq. That agency does not force Aiken County residents to seek hospital care from University Hospital. The agency merely attempts to coordinate the development of health care facilities

in its district, which happens to include portions of Georgia and South Carolina. The mere fact that the Authority complies with the requirements of federal law with regard to health care planning does not in any way indicate purposeful activity in South Carolina such as would justify personal jurisdiction over the Authority by the District Court in South Carolina.

As shown above, the facts found by the District Court do not constitute contacts of a continuous and systematic nature with South Carolina. This finding alone supports the Court of Appeals' conclusion that due process precludes the exercise of jurisdiction over the Authority. Nevertheless, there are additional and compelling reasons why the Court of Appeals' decision is correct.

The ready availability of medical care is an important aspect of a state's public policy. Since the case of Wright v.

Yackley, supra, the courts have recognized that forcing health care providers to defend their conduct in foreign courts can have a chilling effect on the ability of persons to seek health care outside their own state. In Hume v. Durwood Medical Clinic, Incorporated, supra, the South Carolina Court of Appeals considered whether the South Carolina courts could exercise jurisdiction over a North Carolina medical clinic and two of its staff physicians. In deciding that the South Carolina courts could not exercise such jurisdiction, the court recognized the public policy reasons for declining to exercise jurisdiction.

> South Carolina's interest in providing her citizens with a convenient forum for the vindication of torts imposed at the hands of nonresidents must be balanced by its countervailing interest of insuring that its residents receive adequate medical services to meet their needs wherever they may be required to go to receive it. Wright v. Yackley, supra.

. . .

> Considering the tenuous character of the relationship between the appellants and South Carolina, in light of this State's interest in providing service of process over nonresidents to its injured citizens, in tandem with the chilling effect that the exercise of jurisdiction over the appellants could have on the availability of medical services in South Carolina, we conclude that the assertion of personal jurisdiction over the appellants would be unreasonable under the circumstances of this case.

Hume v. Durwood Medical Clinic 318 S.E.2d at 123.

Contrary to the petitioners' representation in their brief, the South Carolina Supreme Court has dismissed the writ of certiorari in the Hume decision. Accordingly, the Hume decision stands as a firm evidence that South Carolina has decided that its public policy does not favor the exercise of jurisdiction over out-of-state health care providers who merely treat South Carolina residents. In

light of this policy, it would be illogical for the United States District Court, using the South Carolina Long-Arm Statute, to exercise jurisdiction over the Authority in this case.

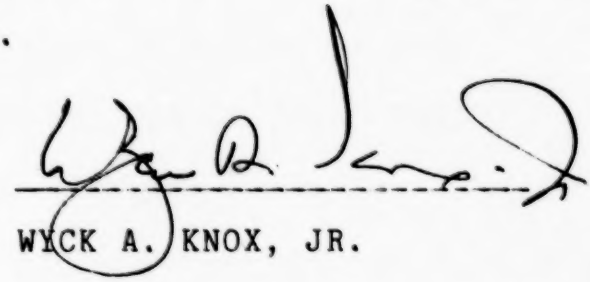
The final factor supporting the Court of Appeals' decision is the ready access of the petitioners to a forum in which their complaint can be heard. At the present time, the petitioners are asserting their malpractice claims in the Georgia courts. This is not a case where the petitioners would have to suffer any undue burden, such as travelling across the country, to pursue their claims. A forum with jurisdiction over the Authority is not only available to petitioners, but is presently being utilized by the petitioners. There is no reason to stretch the "traditional notions of fair play and substantial justice," to include the exercise of jurisdiction over the Authority by the District Court in

South Carolina.

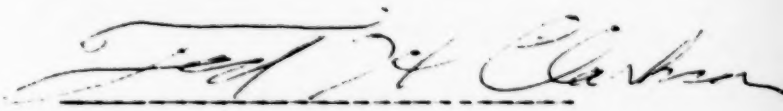
CONCLUSION

The evidence before the District Court and considered by the Court of Appeals establishes that the Authority does not have contacts with the State of South Carolina of a continuous and systematic nature. Rather, the hospital operated by the Authority merely treats South Carolina residents who voluntarily come to Georgia seeking medical care. Accordingly, the Court of Appeals correctly decided that the District Court could not exercise personal jurisdiction over the Authority in this medical malpractice action arising from an alleged tort committed, if at all, within the State of Georgia. On this basis, the Richmond County Hospital Authority requests that the Court deny the petition for writ of certiorari.

RESPECTFULLY submitted this 21st day of June, 1985.



WYCK A. KNOX, JR.



TED H. CLARKSON

OF COUNSEL:

KNOX & ZACKS

Post Office Box 2043

Augusta, Georgia 30903

(404) 724-2622

CERTIFICATE OF FILING BY MAIL
AND SERVICE UPON OPPOSING PARTY

I hereby certify that pursuant to Rule 28.2, I have this day deposited forty (40) copies of the attached petition for writ of certiorari in the United States Post Office, in a package with proper first class postage attached, the same being addressed to the Clerk of the United States Supreme Court, 1 First Street, N.E., Washington, D.C. 20543.

Further, I hereby certify that I have on this same day deposited in a United States Post Office, with proper first class postage attached, three (3) copies of the attached petition for writ of certiorari to each of the following parties:

Mr. A. Camden Lewis

Daryl G. Hawkins

Post Office Box 11208

Columbia, South Carolina 29211

This 21st day of June, 1985.

WYCK A. KNOX, JR.

Signed, sealed and subscribed before me this 21st day of June, 1985.

NOTARY PUBLIC, at large.

~~County~~, Georgia

MY COMMISSION EXPIRES DEC. 12, 1988

(SEAL)